

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TED LINDSEY,

Defendant-Appellant.

UNPUBLISHED

June 13, 2006

No. 261066

Wayne Circuit Court

LC No. 04-010280-02

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for assault with intent to commit murder, MCL 750.83, as an aider and abettor, MCL 767.39. Defendant was sentenced to 5 to 15 years' imprisonment for his conviction. We affirm.

Defendant first argues that the district court abused its discretion in binding him over for trial because the prosecution failed to show that he committed the crime of assault with intent to murder as a principal or an aider and abettor, and therefore, the circuit court erred in denying his motion to quash the felony information. We disagree. This Court reviews a circuit court's decision to grant or deny a motion to quash an information de novo to determine if the district court abused its discretion in binding over a defendant for trial. *People v Green*, 260 Mich App 710, 714; 680 NW2d 477 (2004).

"A district court must bind a defendant over for trial when the prosecutor presents competent evidence constituting probable cause to believe that (1) a felony was committed and (2) the defendant committed that felony." *People v Northey*, 231 Mich App 568, 574; 591 NW2d 227 (1998). In order to bind the defendant over for trial the judge is not required to find that the evidence at the time of the preliminary examination proves the defendant's guilt beyond a reasonable doubt. *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000). When deciding to bind a defendant the magistrate may factor into its consideration direct or circumstantial evidence. *Hudson, supra* at 278.

To prove assault with intent to murder the prosecution must show: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Brown*, 267 Mich App 141, 148; 703 NW2d 230 (2005). To support a finding that a defendant aided and abetted a crime, the prosecutor must show that: (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement

that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *People v Carines*, 460 Mich 750, 757-758; 597 NW2d 130 (1999).

At the preliminary examination, there was evidence presented that Deunte Washington and Antoine Davis got into a fight at a liquor store, and that Snipes tried to intervene. Washington left the store in his car, and Snipes and Davis walked home. Later, Snipes and Davis were talking in front of Snipes' home when Washington pulled his car in front of Snipes' home and got out. The three argued for ten minutes when a green minivan pulled over across the street in front of Snipes' home. The driver, defendant, got out of the green minivan and Snipes then told him to leave. Although defendant left at Snipes' request, defendant stated that "[he] will be back." When defendant returned to Snipes' home, he did so with a "car full of dudes," including Finley. Defendant got out of his mini van and stated to Snipes, "what you said, homeboy." Then Finley approached Snipes and also stated to him, "what did you say homeboy." At that point, Finley pulled a gun and shot Snipes. Defendant and Finley fled the scene in defendant's mini van. Washington identified Finley as the person who shot Snipes. Washington also maintained that defendant drove Finley to Snipes' house. Although Snipes testified that, at that time, he was unsure who shot him, he maintained that defendant drove the person who shot him to his house.

A review of the record shows that the district court did not abuse its discretion in binding over defendant for trial because the prosecution presented sufficient evidence to show a felony was committed and that defendant committed that felony. *Northey, supra* at 574. The evidence was sufficient to find probable cause, and therefore, defendant's bind over was proper. Because the district court did not abuse its discretion in binding defendant over for trial, the circuit court properly denied defendant's motion to quash the felony information.¹

Defendant next argues on appeal that the prosecution presented insufficient evidence at trial to prove that he committed the crime of assault with intent to murder as an aider and abettor. We disagree.

This Court reviews de novo a claim of insufficiency of the evidence. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). In doing so, the Court considers the evidence "in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003), citing *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime." *Id.*

The prosecution presented sufficient evidence to sustain defendant's conviction. To prove assault with intent to murder the prosecution must show: (1) an assault, (2) with an actual

¹ Moreover, even if the district court erroneously concluded that sufficient evidence was presented at the preliminary examination to bind over defendant for trial, we conclude the error is harmless because the prosecution presented sufficient evidence to convict of the crime charged. *People v Libbett*, 251 Mich App 353, 411; 650 NW2d 407 (2002).

intent to kill, (3) which, if successful, would make the killing murder. *Brown, supra* at 148. “The intent to kill may be proven by inference from any facts in evidence.” *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). To support a finding that a defendant aided and abetted a crime, the prosecutor must show that: (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *Carines, supra* at 757-758.

Evidence was presented at trial that defendant went to Snipes’ home prior to the shooting and when Snipes told defendant to leave from in front of his house, defendant stated, “[he] will be back.” Minutes after making the statement, defendant returned to Snipes’ house in his mini van with two other cars of people following him. Finley was defendant’s front seat passenger. Defendant got out of his mini van and stated to Snipes, “what was you sayin.” Then Finley walked up to Snipes and repeated the same. Finley then pointed a gun to Snipes’ face. Snipes tried to push the gun away from his face but Finley fired two shots. At least two people testified that Finley shot Snipes. Although Antoine Davis testified that he was unsure who shot Snipes, Davis told Officer Lucas hours after the shooting had occurred that Finley shot Snipes. After Snipes was shot, defendant and Finley fled the scene in defendant’s mini van.

This Court has found that “the trier of fact may make reasonable inferences from direct or circumstantial evidence in the record.” *People v Perkins*, 262 Mich App 267, 268-269; 686 NW2d 237 (2004). “Intent, like any other fact, may be proven indirectly by inference from the conduct of the accused and surrounding circumstances from which it logically and reasonably follows.” *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). While it is true that “mere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to show that a person aided and abetted a crime,” the prosecution presented evidence showing that defendant was not just merely at the scene of the shooting, but that his words and actions contributed to the shooting. *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992). “The phrase ‘aids or abets’ is used to describe any type of assistance given to the perpetrator of a crime by words or deeds that are intended to encourage, support, or incite the commission of that crime.” *People v Moore*, 470 Mich 56, 63; 679 NW2d 41 (2004). The evidence shows that defendant returned to Snipes’ house minutes after being told to leave, and when defendant returned, he brought Finley with him. Both defendant and Finley approached Snipes and stated, something to the effect of, “what [was] you sayin.” Finley shot Snipes. Defendant and Finley then fled the scene in defendant’s mini van.

Although defendant argues that he lacked the intent necessary to commit the crime charged, the evidence presented shows otherwise. Defendant’s intent to aid and abet in the crime charged may be inferred by defendant’s statement to Snipes, “what was you sayin,” and defendant’s actions of driving Finley to Snipes’ house and helping Finley flee from the scene after the shooting. Although no evidence was presented showing that defendant supplied Finley with the gun used in the shooting, defendant supplied Finley with a ride to Snipes’ house where the shooting occurred. This Court has found that an “aider and abettor’s state of mind may be inferred from all the facts and circumstances. Factors that may be considered include a close association between the defendant and the principal, the defendant’s participation in the planning or execution of the crime, and evidence of flight after the crime.” *Carines, supra* at 758. Here,

defendant and Finley were friends, and defendant drove Finley to Snipes' house and, after the shooting, drove Finley to flee the scene.

The prosecution presented sufficient evidence to prove that Finley committed an assault with intent to murder. The evidence shows that Snipes was shot, and that the shooting was done with the intent to kill, which, if successful, would have amounted to murder. *Brown, supra* at 148. The prosecution also proved that defendant aided and abetted Finley in the commission of the crime. The prosecution showed that Finley committed the crime of assault with intent to murder, that defendant performed acts or gave encouragement that assisted the commission of the crime by driving Finley to the scene and helping Finley flee after the shooting, and that defendant intended the commission of the crime or had knowledge that Finley intended its commission at the time he gave aid and encouragement. *Carines, supra* at 757-758.

Affirmed.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Pat M. Donofrio